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No. 83, Original

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

STATE OF MARYLAND, *et al.*,

Plaintiffs,

v.

STATE OF LOUISIANA,

Defendant.

ON THE REPORT OF THE SPECIAL MASTER
DATED SEPTEMBER 15, 1980

MOTION OF PIPELINE COMPANIES FOR LEAVE TO FILE REPLY TO LOUISIANA'S EXCEPTIONS AND MEMORANDUM REPLY

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December 5, 1980

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MOTION FOR LEAVE TO FILE REPLY TO LOUISIANA'S EXCEPTIONS

The pipeline companies, intervenor-applicants in this proceeding,[1] through their undersigned counsel of record respectfully move the Court for leave to file the attached Memorandum Reply to Louisiana's Exceptions to the instant Report of the Special Master.

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[1] Columbia Gas Transmission Corporation, Consolidated Gas Supply Corporation, El Paso Natural Gas Company, Florida Gas Transmission Company, Michigan Wisconsin Pipe Line Company, Mississippi River Transmission Corporation, Natural Gas Pipeline

[footnote continued]

As their support of this motion, the pipeline companies incorporate by reference the grounds set forth in their motion dated November 14, 1980 for leave to file exceptions to this report of the Special Master.

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Company of America, Northern Natural Gas Company, Panhandle Eastern Pipeline Company, Sea Robin Pipeline Company, Southern Natural Gas Company, Tennessee Gas Pipeline Company (a division of Tenneco Inc.), Texas Eastern Transmission Corporation, Texas Gas Transmission Corporation, Transcontinental Gas Pipe Line Corporation, Trunkline Gas Company, and United Gas Pipe Line Company ("the pipeline companies"). The listing required by the recent amendment of the Court's Rule 28.1 is set out in the Appendix hereto.

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MEMORANDUM REPLY TO LOUISIANA'S EXCEPTIONS

Louisiana's exceptions to the Special Master's recommendations that its motion to dismiss be denied is based primarily on the claim that the Special Master ignores controlling, prudential considerations in light of an alleged availability of an appropriate State forum (Br., pages 11-29). In this regard, Louisiana urges that there is an alternative state forum available and hence *Arizona v. New Mexico*, 425 U.S. 196 (1976), calls for dismissal of this case.

However, one striking difference between this proceeding and the *Arizona* case is that the latter case was

decided on the motion for leave to file whereas here this Court has already accepted jurisdiction by order issued June 18, 1979, and during the nearly 18 months which have elapsed since that time, significant proceedings have been conducted before the Special Master appointed by the Court. As a result, there are pending before the Court the Master's recommendations with regard not only to Louisiana's motion to dismiss, but also with regard to motions for judgment on the pleadings as well as motions for leave to intervene filed, *inter alia*, by the United States and the pipeline companies. Should the Court agree with the contentions of the plaintiff States, the United States and the pipeline companies that judgment on the pleadings may be granted without evidentiary hearings, that would be the end of the case.

The state court proceedings, by contrast, have been virtually dormant for the past 18 months with the exception of a recent flurry of activity by Louisiana, apparently designed to bootstrap its contentions here, that this Court should now refrain from exercising its jurisdiction in deference to the state court proceedings.[1]

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[1] As Louisiana noted (Br., pages 9-10), seven separate state court proceedings in which the constitutionality of the tax is at issue are pending in Louisiana. The pipelines are parties in the first of these, *Edwards, et al. v. Transcontinental*, brought by officials of Louisiana seeking a declaratory judgment of constitutionality, and in one of the six other actions, which seek recovery of the tax paid and being paid under protest. Contrary to Louisiana's implication (Br., page 10), none of these proceedings has progressed significantly beyond the pleadings stage. Only recently, in October, 1980, did Louisiana move for consolidation of those actions, and filed a rule for the pipeline companies to show cause why the eight

[footnote continued]

No significant action has been taken to obtain a decision in any of the pending state court actions. In view of the important constitutional questions involved, it seems inevitable that the validity of the tax ultimately will be decided by this Court; and, if and when a decision by the state trial court is rendered, a great deal of additional time would expire before that case could reach this Court in the stage in which the instant case is now presented here.[2]

The prolonged delays which would thus ensue in reaching a definitive ruling on the controversy here involved constitute potent reasons against deferring the controversy to the Louisiana state courts. The huge sums involved (aggregating roughly a quarter of a billion dollars a year) and the wide-spread impact of the First Use Tax (affecting rates paid by millions of customers in some thirty states)[3] together with the importance of

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sovereign states who are the plaintiffs in the action pending in this Court should not be "invited" to appear as intervenors in the declarartory action filed by the Louisiana officials. On November 10, 1980, the state court judge dismissed out of hand Louisiana's rule to show cause.

[2]Even if the case were on a "fast track" in the Louisiana state courts, and were disposed of summarily by the trial court, and then by direct review by the Louisiana Supreme Court through supervisory writ jurisdiction (assuming that court is willing to exercise its discretion and bypass the intermediate appellate courts), these proceedings and the subsequent appellate or writ process to this Court probably would consume in the order of two additional years.

[3]By comparison, the *Arizona* case involved far less money and its impact was only upon limited customers in Arizona. Moreover, in *Arizona*, the New Mexico law permitted utilities to contest the tax while withholding payment whereas here, the tax has an immediate impact. Louisiana law requires the pipeline companies to pay the First Use Tax and the pipeline companies are collecting the tax from their customers subject to refund.

the constitutional issues involved, all point to the need for expedition which clearly can be achieved only by the Court's continued exercise of original jurisdiction herein. As the Master observed (Report, page 20):

> While no great speed seems possible in a case of this magnitude and complexity, this Court can at least control the case and, if it desires, move it forward more speedily than would be possible in a trial and appeal procedure [in the state courts of Louisiana].

Indeed, over the past year and a half, the parties and prospective intervenors and *amici* have briefed exhaustively the legal issues believed to be dispositive of the whole case on the merits. It would be particularly inappropriate and unwise under these circumstances, even from a practical standpoint, to defer to the Louisiana trial court and start anew.

Louisiana is unable to show any possible prejudice to its case that would result from an early definitive judgment in the Court, especially when, as here, the issues of federal preemption and constitutionality are sharply drawn and squarely presented.

The pipelines accordingly submit that the Court should accept the Master's recommendation denying Louisiana's motion to dismiss.

Respectfully submitted,

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December 5, 1980

APPENDIX

Pursuant to Rule 28.1 of this Court, the pipeline companies submit the following:

1. Columbia Gas Transmission Corporation is a wholly owned subsidiary of The Columbia Gas System, Inc. The non-wholly owned subsidiaries and affiliates are:

Big Marsh Oil Company

2. Consolidated Gas Supply Corporation is a wholly owned subsidiary of Consolidated Natural Gas Company. There are no non-wholly owned subsidiaries or affiliates.

3. El Paso Natural Gas Company is a wholly owned subsidiary of The El Paso Company, The non-wholly owned subsidiaries and affiliates are:

El Paso Europe – Afrique, S.A.
Minera San Pedro Corralitos, S.A.
El Paso Polyoletins Company
Geonuclear Nobel Paso
Windjammer, Inc.
Desert America Insurance Agency, Inc.

4. Florida Gas Transmission Company is a subsidiary of The Continental Group, Inc. The non-wholly owned subsidiaries and affiliates are:

Teepak Produktie N.V.
National Cup & Container Co., Ltd.
Envolturas Industries S.A.
Continental Plasticos Ltda.
Shellmar de Colombia S.A.
Shellmar Embalagem Moderna S.A.
Shellmar Comercio E. Representacoes
Peachtree Generating Corp.
Fibro Tambor S.A. De C.V.
Metal Cleaning & Processing, Inc.

The Continental Group
Envases Generales Continental de Mexico S.A.
Compania de Envases, S.A.
Continental Can Hong Kong, Ltd.
NiHon Harrison, Ltd.
Brasflor-Comercio E. Industria de Subproductos de Madeira S.A.
Convertidora Venezolana de Papel
Continental Container Co., Inc.
Braskraft S.A. Florestal E. Industrial
Containers Limited
P.T. United Can Company Limited
Kuwait Metal Container Co., Ltd.
Continental Can Saudi Arabia, Ltd.
The Metal Box Company of India, Ltd.
Fabricana Boliviana de Envases Sociedad Anonima
Dominguez Continental S.A.
Industrias del Norte S.A.
Mill Paper Fibres Limited
The Continental Group European Industries S.A.
Elbatainer (U.K.) Ltd.
Centenera Fabricas Sudamericanas de Envases S.A.
Dominguez & Cia. Caracas S.A.
Industrias Reunidas S.A.
Continental Produtos Metalurgicos Ltda.
Metalurgica Matarazzo
Aktiebolaget Platmanufaktur
Schmalbach-Lubeca GMBH
Thomassen & Drijver Verblifa N.V.
ETS Schuybroek S.A.
Elbatainer France
Sobemi N.V.
De Clerck N.V.
Tedeco S.A.R.L.

The Continental Group GNBH
The Life Insurance Company of Virginia
Ontario Title Insurance Company
Lawyers Title of Arizona
St. Francis County Abstract Company, Inc.
Lawyers Abstract Corporation
Verblifa N.V.
Societe Pour le Developpementet L'Expansion D'Entreprises (SDE)
Lawyers Title Insurance Corporation
Long & Melone, Ltd.
Sentinel Escrow, Ltd.
Lawyers Title Company of Idaho
Lawyers Abstract Company

5. Michigan Wisconsin Pipe Line Company is a wholly owned subsidiary of American Natural Resources Company. The non-wholly owned subsidiaries and affiliates are:

Great Lakes Gas Transmission Company

6. Mississippi River Transmission Corporation is a wholly owned subsidiary of Missouri Pacific Corporation. There are no non-wholly owned subsidiaries or affiliates.

7. Natural Gas Pipeline Company of American is a wholly owned subsidiary of Peoples Energy Corporation. The non-wholly owned subsidiaries and affiliates are:

The Peoples Gas Light and Coke Company
North Shore Gas Company

8. Northern Natural Gas Company is a division of Internorth, Inc. There are no non-wholly owned subsidiares or affiliates.

9. Panhandle Eastern Pipe Line Company has no parent. The non-wholly owned subsidiaries and affiliates are:

Natural Helium Corporation
LOGAS Development Company

10. Sea Robin Pipeline Company is an unincorporated joint venture owned 50% each by wholly owned subsidiaries and affiliates of Southern Natural Gas Company and United Gas Pipeline Company. See 11 and 17, *infra.*

11. Southern Natural Gas Company is a wholly owned subsidiary of Southern Natural Resources, Inc. There are no non-wholly owned subsidiaries and affiliates.

12. Tennessee Gas Pipeline Company, a Division of Tenneco Inc. has no parent company. The non-wholly owned subsidiaries and affiliates are:

Border Gas Inc. (Delaware)
Monroe Auto Pecas, S. A. (Brazil)
Onner do Brasil S. A. (Brazil)
Tenneco Corporation (Delaware)
Collins Pipeline Company (Delaware)
Kern River Canal and Irrigating Company (California)
MISTAL Inc. (Delaware)
Nuodex of Canada, Ltd. (Canada)
HT Gathering Company (Delaware)
T&M Terminal Company (Delaware)
Compania Financiera Case, S.A. (Spain)
Construcciones Agrometalicas Levante, S. A. (Spain)
D. A. R. France, S. A. (France)
Establissement Robert Bellanger, S. A. (France)
Lorenhausen Maschinenban AG (Germany)
Poclain do Brasil S. A. (Brazil)
Poclain Hispana S. A. (Spain)
Societe Anonyme Industrielle de Resines (France)

S. A. Paper Chemicals Proprietary, Ltd. (South Africa)
Tees Storage Limited England
Albright & Wilson (Australia), Ltd. (Australia)
Bush Boake Allen (India), Ltd. (India)
GMB Proteins Ltd. (England)
W. J. Bush and Company (Nigeria), Ltd. (Nigeria)
Turaco Nihausawa, Ltd. (Nigeria)
Arndale Fuels, Ltd. (United Kingdom)
Bracey Petroleum Products, Ltd. (United Kingdom)
Tenneco Oil Products, Ltd. (United Kingdom)
Intertrac Viehmann & Co. (Germany)
Tractortechnic Canada, Ltd. (Canada)
Stoco Mutual Water and Sewer Company (California)

13. Texas Eastern Transmission Corporation is a wholly owned subsidiary of Texas Eastern Corporation. The non-wholly owned subsidiaries and affiliates are:

Transwestern Pipeline Company
Millray, Inc.

14. Texas Gas Transmission Company has no parent company. It has no non-wholly owned subsidiaries or affiliates.

15. Transcontinental Gas Pipe Line Corporation is a wholly owned subsidiary of Transco Companies, Inc. The non-wholly owned subsidiaries and affiliates are:

Border Gas Inc.
Dixie Pipe Line Company
Trans-Jeff Chemical
C&T Pipeline Inc.

16. Trunkline Gas Company is a wholly owned subsidiary of Panhandle Eastern Pipe Line Company. See 9, *supra*.

17. United Gas Pipe Line Company is a wholly owned subsidiary of United Energy Resources, Inc. There are no non-wholly owned subsidiaries or affiliates.